

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**UNITED STATES OF AMERICA,
PLAINTIFF,**

CASE NO. 2:06cr00094-WKW

v.

**WILLIE DEWHART,
DEFENDANT.**

EMERGENCY MOTION TO BRIEFLY CONTINUE HEARING

Comes now Willie Dewhart by and through undersigned Counsel and files this emergency motion requesting that this Court continue the hearing set for June 18, 2007 at 2:00 p.m. and in support thereof states the following:

1. Counsel was unable to appear at the last competency hearing as she was in trial in the matter of *United States v. Harry Jones*, Case No. 2:06CR-215-MEF, United States District Court, Middle District of Alabama.

2. The Court reset the hearing for June 18, 2008. On April 16, 2008 the undersigned's new administrative assistant spoke with defense expert Clinical Psychologist Daniel Koch regarding a written report on his findings.

Unfortunately, counsel's new employee of approximately two months failed to communicate with the undersigned over Dr. Koch's concerns relating to the conditions under which he had to examine Dewhart and issues relating to finalizing his report.

3. The undersigned was under the impression that Dr. Koch's report would be forthcoming and took no further action. Quite frankly, Dr. Koch's report did not come and we dropped the ball on notifying Dr. Koch of the hearing scheduled for June 18, 2008. That task and following upon the report was left undone and there is no excuse but human error.

4. Counsel recognizes this has caused an inconvenience for the Court. Yesterday counsel was before the Second Circuit Court of Appeals for oral argument in the case of *United States of America v. Kenneth Brown*, Case No.07-0768-cr. Counsel's flight from New York City was delayed and she was on a plane for several hours awaiting departure. Counsel arrived in

Montgomery at 1:00 a.m. today. Today counsel appeared in Russell County Circuit Court in the matter of *State of Alabama v. Eddie Gordy*, Case No. 07-486, Circuit Court of Russell County.

5. The Dewhart matter was addressed this a.m. when counsel learned that no followup was had with Dr. Koch since the April 16, 2008 contact by Assistant Geneie Gadd.

6. Counsel contacted Susan Redmond on today's date to inquire if she had experts scheduled for tomorrow's hearing. She advised no since she had not received a report.

7. Dr. Koch is obviously unavailable on this short notice. Even if he were available by telephone, AUSA Redmond would be at a disadvantage because Dr. Koch would be addressing his findings without her having the benefit of a written report in advance.

8. Counsel is left with no choice at this point but to apologize to the Court and seek the Courts indulgence on one last and final continuance.

9. Counsel is requesting that this matter be reset, if convenient to the Court and AUSA Redmond, so as to allow Dr. Koch to provide his report for review by AUSA Redmond and so that he will be available to testify. Dr. Koch's preliminary report to the undersigned is that Dewhart is incompetent, retarded, and incapable of proceeding in this case. Dr. Koch further plans to refute the Government's prepared psychological findings.

10. Given the seriousness of this situation, and without the benefit of Dr. Koch's testimony on Dewhart's behalf, it is respectfully requested that the matter be reset. Counsel assures the Court this matter would have been handled or brought to the Court's attention earlier if counsel had realized a problem existed.

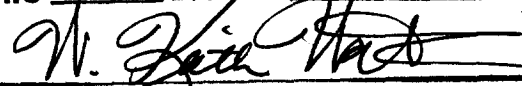
11. AUSA Susan Redmond was again contacted on today's date and she has no objection to the continuance under the circumstances.

Respectfully submitted,

s/Susan G. James
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MOTION GRANTED

THIS 17th DAY OF June, 2008



W. KEITH WATKINS
UNITED STATES DISTRICT JUDGE